

(1 August 2009 – to date)

ELECTRONIC COMMUNICATIONS ACT 36 OF 2005

(Gazette No. 28743, Notice No.364 dated 18 April 2006. Commencement date: 19 July 2006) [Proc. No. R29, Gazette No. 29044]

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

REGULATIONS REGARDING THE CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES ISSUED IN TERMS OF SECTION 54 OF THE ELECTRONIC COMMUNICATIONS ACT NO 36 OF 2005

ICASA CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES

General Notice 958 in Government Gazette 32381 dated 6 July 2009. Commencement date:

1 August 2009

- (1) The Independent Communications Authority of South Africa ("the Authority") hereby prescribes regulations in terms of section 54(1) of the Electronic Communications Act (Act 36 of 2005), being the Code of Conduct for Broadcasting service licensees.
- (2) A copy of the regulations, as published in the *Government Gazette*, is available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at 164 Katherine Street, Pinmill Farm, Sandton Block D, between 08h30 and 16h30, Monday to Friday.

(Signed)

PARIS MASHILE
CHAIRPERSON

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Purpose of the regulations

In accordance with Section 54(1) of the ECA the Authority hereby sets standards according to which Broadcasting Service Licensees will be monitored by the Authority and adjudicated upon in terms of Section 17A-E of the ICASA Act, subject to Section 54(3) of the ECA.

1. Definitions

In these regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned.

"Act" means the Electronic Communications Act, Act no 36 of 2005;

"audience" refers to both the viewers and listeners of television and sound broadcasting service licensees;

"broadcasting service licensee" means a broadcasting service licensee as defined in section 1 of the Act;

"child pornography" means any description or visual image, real or simulated, however created, explicitly depicting a person who is or who is depicted as being under the age of 18 years (a) engaged in or participating in sexual conduct; (b) engaged in an explicit display of genitals; or (c) assisting another person to engage in sexual conduct which, judged within context, has as its predominant objective purpose, the stimulation of sexual arousal in its target audience;

"child" means a person under the age of 18 years;

"ICASA Act" means the Independent Communications Authority of South Africa Act 13 of 2000;

"sexual conduct" means: (i) the display of genitals or of the anus; (ii) masturbation; (iii) sexual intercourse including anal sexual intercourse; (iv) in the case of child pornography, the fondling or touching of breasts, genitalia or the anus; (v) the penetration of a vagina or anus with any object; (vi) oral genital contact; or (vii) oral anal contact;

"watershed period" means the period between 21h00 and 05h00 for free-to-air television Broadcasting service licensees and 20h00 and 05h00 for subscription television Broadcasting service licensees.

2. Scope of Application

- (1) Broadcasting service licensees must ensure that all broadcasts comply with this Code.
- (2) Broadcasting service licensees must ensure that relevant employees and programme-makers, including those from whom they commission programmes, understand the contents and significance of this Code.
- (3) All broadcasting service licensees should also have procedures for ensuring that programme-makers can seek guidance as to the Code from them.

3. Violence and Hate speech

- (1) Broadcasting service licensees must not broadcast material which, judged within context;
 - (a) contains violence which does not play an integral role in developing the plot, character or theme of the material as a whole; or
 - (b) sanctions, promotes or glamorises violence or unlawful conduct.
- (2) Broadcasting service licensees must not broadcast material which, judged within context, sanctions, promotes or glamorises violence or unlawful conduct based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.
- (3) Broadcasting service licensees must not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.

4. Exclusions

Regulation 3 does not apply to:

- (1) a broadcast which, judged within context, amounts to a *bona fide* scientific, documentary, dramatic, artistic, or religious broadcast;
- (2) a broadcast which amounts to a discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or

- (3) a broadcast which amounts to a *bona fide* discussion, argument or opinion on a matter of public interest.

5. Children

- (1) Broadcasting service licensees must not broadcast material which is harmful or disturbing to children at times when a large number of children is likely to be part of the audience.
- (2) Broadcasting service licensees must exercise particular caution, as provided below, in the depiction of violence in children's programming.
- (3) In children's programming portrayed by real-life characters, violence may, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot.
- (4) Animated programming for children, while accepted as a stylised form of story-telling which may contain non-realistic violence, must not have violence as its central theme, and must not incite dangerous imitation.
- (5) Programming for children must with reasonable care deal with themes that could threaten their sense of security when portraying, for example, domestic conflict, death, crime or the use of drugs or alcohol.
- (6) Programming for children must with reasonable care deal with themes which could influence children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, the use of matches or the use of dangerous household objects as toys.
- (7) Programming for children must not contain realistic scenes of violence which create the impression that violence is the preferred or only method to resolve conflict between individuals.
- (8) Programming for children must not contain realistic scenes of violence which minimise or gloss over the effect of violent acts. Any realistic depictions of violence must portray, in human terms, the consequences of that violence to its victims and its perpetrators.
- (9) Programming for children must not contain frightening or otherwise excessive special effects not required by the story line.
- (10) Offensive language, including profanity and other religiously insensitive material, must not be broadcast in programmes specially designed for children.
- (11) No excessively or grossly offensive language should be used before the watershed period on television or at times when a large number of children is likely to be part of the audience on television or radio.

6. Watershed Period

- (1) Programming on television which contains scenes of explicit violence and/or sexual conduct and/or nudity and/or grossly offensive language intended for adult audiences must not be broadcast before the watershed period.
- (2) Promotional material and music videos which contain scenes of explicit violence and/or explicit threatening violence and/or sexual conduct and/or the fondling or touching of breasts and/or genitalia or the anus and/or nudity and/or offensive language intended for adult audiences must not be broadcast before the watershed period.
- (3) Some programmes broadcast outside the watershed period may not be suitable for very young children. Licensees must provide sufficient information, in terms of regular scheduling patterns or audience advisories, to assist parents and *de facto* or legal guardians to make appropriate viewing choices.
- (4) Television broadcasting service licensees may, with the advance of the watershed period, progressively broadcast more adult material.
- (5) Broadcasting service licensees must be particularly sensitive to the likelihood that programmes which commence during the watershed period and which run beyond it may then be viewed by children.

7. Sexual Conduct

- (1) Broadcasting service licensees must not broadcast material which, judged within context, contains a scene or scenes, simulated or real, of any of the following:
 - (a) child pornography;
 - (b) bestiality;
 - (c) sexual conduct which degrades a person in the sense that it advocates a particular form of hatred based on gender and which constitutes incitement to cause harm;
 - (d) explicit sexual conduct;
 - (e) explicit extreme violence or the explicit effects thereof; or
 - (f) explicit infliction of domestic violence.

- (2) Sub-regulation 8(1) shall not be applicable to *bona fide* scientific, documentary, dramatic or artistic material which, judged within context, is of such a nature; provided that it is broadcast with due audience advisory after the watershed on a sliding scale according to its content.

8. Audience Advisories

- (1) To assist audiences in choosing programmes, television broadcasting service licensees must provide advisory assistance which, when applicable, must include guidelines as to age, where such broadcasts contain violence, sex, nudity and/or offensive language. The advisory must be visible on the screen for a minimum of 90 seconds at the commencement of the programme and for a minimum of 30 seconds after each advertisement or other break. Where the frequency of the said subject matters, or any one or some of them, is high, a continuous advisory will be necessary, whether it is broadcast before or after the watershed.
- (2) The following visual advisory age system must be used: 10, 13, 16 and 18. The following symbols must be used in accordance with the relevant content: V(violence), L(language), N(nudity), S(sex), PG (Parental Guidance).
- (3) An audio advisory before the commencement of the programme must also accompany the broadcast of a film with an age restriction of 18.

9. Classification by Films and Publications Board

- (1) Where a Films and Publications Board classification for a film exists in terms of the Films and Publication[sic] Act No. 65 of 1996, such classification may be used as a guide for an advisory to the broadcast of the film.
- (2) No film which has an XX classification in terms of the Films and Publications Act may be broadcast.

10. News

- (1) Broadcasting service licensees must report news truthfully, accurately and fairly.
- (2) News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by:
 - (a) Distortion, exaggeration or misrepresentation.
 - (b) Material omissions; or
 - (c) Summarisation

- (3) Only that which may reasonably be true, having reasonable regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with reasonable regard to context and importance.
- (4) Where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it must be presented in such manner as to indicate clearly that such is the case.
- (5) Where there is reason to doubt the correctness of the report and it is practical to verify the correctness thereof, the report must be verified. Where such verification is not practical, that fact must be mentioned in the report.
- (6) Where it subsequently appears that a broadcast report was incorrect in a material respect, it must be rectified forthwith, without reservation or delay. The rectification must be presented with such a degree of prominence and timing as in the circumstances may be adequate and fair so as to readily attract attention.
- (7) The identity of rape victims and other victims of sexual violence must not be divulged in any broadcast, whether as part of news or not, without the prior valid consent of the victim concerned.
- (8) Broadcasting service licensees must advise viewers in advance of scenes or reporting of extraordinary violence, or graphic reporting on delicate subject-matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates.
- (9) Broadcasting service licensees must not include explicit or graphic language related to news of destruction, accidents or sexual violence which could disturb children or sensitive audiences, except where it is in the public interest to include such material.

11. Comment

- (1) Broadcasting service licensees are entitled to broadcast comment on and criticism of any actions or events of public importance.
- (2) Comment must be an honest expression of opinion and must be presented in such manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.
- (3) Where a person has stated that he or she is not available for comment or such a person could not reasonably be reached, it must be stated in the programme.

12. Controversial issues of public importance

- (1) In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.
- (2) A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given the right to reply to such criticism on the same programme. If this is impractical, a reasonable opportunity to respond to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

13. Elections

During any election period, as defined in the ECA, sections 56, 57, 58 and 59 of the ECA and regulations issued in terms thereof apply.

14. Privacy, Dignity and Reputation

- (1) Broadcasting service licensees must exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that the said rights may be overridden by a legitimate public interest.
- (2) In the protection of privacy, dignity and reputation special weight must be afforded to South African cultural customs concerning the privacy and dignity of people who are bereaved and their respect for those who have passed away.
- (3) In the protection of privacy, dignity and reputation special weight must be afforded to the privacy, dignity and reputation of children, the aged and the physically and mentally disabled.

15. Competitions and Audience Participation

- (1) Broadcasting service licensees must make known during a broadcast the full cost of a telephone call or a SMS, where audiences are invited on air to react to a programme or competition.
- (2) Broadcasting service licensees must specify the proportion of the cost of the call or SMS, as the case may be, which is intended for any specified charitable cause.
- (3) Broadcasting service licensees must ensure that audiences who are invited to compete in any competition are made aware on air of the rules of the competition. Such rules must include the closing date and the manner in which the winner is to be determined.

16. Short title and commencement

Prepared by:

These regulations are called the ICASA Code of conduct for broadcasting service licensees and will come into force on the 1st of August 2009.